

CENTER FOR DISABILITY ACCESS  
Chris Carson, Esq., SBN 280048  
Ray Ballister, Jr., Esq., SBN 111282  
Phyl Grace, Esq., SBN 171771  
Dennis Price, Esq., SBN 279082  
Mail: PO Box 262490  
San Diego, CA 92196-2490  
Delivery: 9845 Erma Road, Suite 300  
San Diego, CA 92131  
(858) 375-7385; (888) 422-5191 fax  
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Emmanuel Ramirez,**

Plaintiff,

v.

**Frederick H. Leeds**, Trustee of the  
Frederick H. Leeds Intervivos Trust  
and of the Maximilian R. Leeds  
Family Trust;  
**Maximilian R. Leeds**, Trustee of  
the Maximilian R. Leeds Family  
Trust;  
**Toni G. Azzi**, Trustee of the Toni G.  
Azzi Living Trust; and Does 1-10,

Defendants.

**Case No. 2:18-CV-08037-FMO-MRW**

**First Amended Complaint For  
Damages And Injunctive Relief For  
Violations Of: American's With  
Disabilities Act; Unruh Civil Rights  
Act**

Plaintiff Emmanuel Ramirez complains of Defendant Frederick H. Leeds, Trustee of the Frederick H. Leeds Intervivos Trust and of the Maximilian R. Leeds Family Trust; Maximilian R. Leeds, Trustee of the Maximilian R. Leeds Family Trust; Toni G. Azzi, Trustee of the Toni G. Azzi Living Trust; and Does 1-10 ("Defendants") and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He suffers from Muscular Dystrophy, cannot walk, and uses a wheelchair for mobility.

2. Defendant Frederick H. Leeds, in individual and representative capacity as the trustee of the Frederick H. Leeds Intervivos Trust and of the Maximilian R. Leeds Family Trust, owned the real property located at or about 913 N. Sunset Avenue, La Puente, California, in August 2018.

3. Defendant Frederick H. Leeds, in individual and representative capacity as the trustee of the Frederick H. Leeds Intervivos Trust and of the Maximilian R. Leeds Family Trust, owns the real property located at or about 913 N. Sunset Avenue, La Puente, California, currently.

4. Defendant Maximilian R. Leeds, in individual and representative capacity as the trustee of the Maximilian R. Leeds Family Trust, owned the real property located at or about 913 N. Sunset Avenue, La Puente, California, in August 2018.

5. Defendant Maximilian R. Leeds, in individual and representative capacity as the trustee of the Maximilian R. Leeds Family Trust, owns the real property located at or about 913 N. Sunset Avenue, La Puente, California, currently.

6. Defendant Toni G. Azzi, in individual and representative capacity as the trustee of the Toni G. Azzi Living Trust, owned the real property located at or about 913 N. Sunset Avenue, La Puente, California, in August 2018.

7. Defendant Toni G. Azzi, in individual and representative capacity as the trustee of the Toni G. Azzi Living Trust, owns the real property located at or about 913 N. Sunset Avenue, La Puente, California, currently.

8. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their

1 relative responsibilities in causing the access violations herein complained of,  
2 and alleges a joint venture and common enterprise by all such Defendants.  
3 Plaintiff is informed and believes that each of the Defendants herein, including  
4 Does 1 through 10, inclusive, is responsible in some capacity for the events  
5 herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff  
6 will seek leave to amend when the true names, capacities, connections, and  
7 responsibilities of the Defendants and Does 1 through 10, inclusive, are  
8 ascertained.

9  
10 **JURISDICTION & VENUE:**

11 9. This Court has subject matter jurisdiction over this action pursuant to  
12 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
13 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

14 10. Pursuant to supplemental jurisdiction, an attendant and related cause of  
15 action, arising from the same nucleus of operative facts and arising out of the  
16 same transactions, is also brought under California's Unruh Civil Rights Act,  
17 which act expressly incorporates the Americans with Disabilities Act.

18 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
19 founded on the fact that the real property which is the subject of this action is  
20 located in this district and that Plaintiff's cause of action arose in this district.

21  
22 **FACTUAL ALLEGATIONS:**

23 12. Plaintiff went to the property in August 2018 to shop at Carniceria La  
24 Lupita ("Store").

25 13. The Store is a facility open to the public, a place of public  
26 accommodation, and a business establishment.

27 14. Paths of travel are one of the facilities, privileges, and advantages  
28 offered by Defendants to patrons of the Store.

1       15. Although there were shelves and merchandise aisles open to customers  
2 for shopping, many paths of travel in and throughout these merchandise aisles  
3 were not accessible because the defendants had a practice of placing  
4 merchandise and merchandise display on the route of travel restricting  
5 passage to less than 36 inches in width.

6       16. In fact, the narrowest pathway was about 10 inches wide. This is simply  
7 too narrow for plaintiff. Plaintiff, because of the narrow aisles, got stuck and  
8 could not maneuver his wheelchair.

9       17. The walkway leading to the entrance of the Store had cross slopes of as  
10 much as 2.9%. This is inaccessible to plaintiff.

11       18. Currently, although there are shelves and merchandise aisles open to  
12 customers for shopping, many paths of travel in and throughout these  
13 merchandise aisles are not accessible to wheelchair users because the  
14 defendants have a practice of placing merchandise and merchandise display  
15 on the route of travel restricting passage to less than 36 inches in width.

16       19. Currently, the walkway leading to the entrance of the Store has cross  
17 slopes of as much as 2.9%.

18       20. Plaintiff personally encountered these barriers.

19       21. This inaccessible facility denied the plaintiff full and equal access and  
20 caused him difficulty, discomfort, and embarrassment.

21       22. Unfortunately, and even though the plaintiff did not personally confront  
22 the barrier, the produce bags are located so that the highest operable parts are  
23 greater than 54 inches above the finish floor and inaccessible to wheelchair  
24 users. In fact, the produce bags are 76 inches high.

25       23. Plaintiff plans to return and patronize the Store but is deterred from  
26 visiting until the defendants remove the barriers.

27       24. The defendants have failed to maintain in working and useable  
28 conditions those features required to provide ready access to persons with

1 disabilities.

2 25. The barriers identified above are easily removed without much  
3 difficulty or expense. They are the types of barriers identified by the  
4 Department of Justice as presumably readily achievable to remove and, in  
5 fact, these barriers are readily achievable to remove. Moreover, there are  
6 numerous alternative accommodations that could be made to provide a greater  
7 level of access if complete removal were not achievable.

8 26. Plaintiff is deterred from returning and patronizing the Store because of  
9 his knowledge of the barriers that exist. Plaintiff will, nonetheless, return to  
10 assess ongoing compliance with the ADA and will return to patronize the  
11 Store as a customer once the barriers are removed.

12 27. Given obvious and blatant nature of the barriers and violations alleged  
13 herein, the plaintiff alleges, on information and belief, that there are other  
14 violations and barriers on the site that relate to his disability. Plaintiff will  
15 amend the Complaint to provide proper notice regarding the scope of this  
16 lawsuit once he conducts a site inspection. However, please be on notice that  
17 the plaintiff seeks to have all barriers related to his disability remedied. See  
18 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
19 encounters one barrier at a site, he can sue to have all barriers that relate to his  
20 disability removed regardless of whether he personally encountered them).

21  
22 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
23 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiff and against all  
24 defendants (42 U.S.C. section 12101, et seq.)

25 28. Plaintiff repleads and incorporates by reference, as if fully set forth  
26 again herein, the allegations contained in all prior paragraphs of this  
27 complaint.

28 29. Under the ADA, it is an act of discrimination to fail to ensure that the

1 privileges, advantages, accommodations, facilities, goods and services of any  
 2 place of public accommodation is offered on a full and equal basis by anyone  
 3 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 4 § 12182(a). Discrimination is defined, inter alia, as follows:

- 5 a. A failure to make reasonable modifications in policies, practices,  
 6 or procedures, when such modifications are necessary to afford  
 7 goods, services, facilities, privileges, advantages, or  
 8 accommodations to individuals with disabilities, unless the  
 9 accommodation would work a fundamental alteration of those  
 10 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11 b. A failure to remove architectural barriers where such removal is  
 12 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 13 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
 14 Appendix “D.”
- 15 c. A failure to make alterations in such a manner that, to the  
 16 maximum extent feasible, the altered portions of the facility are  
 17 readily accessible to and usable by individuals with disabilities,  
 18 including individuals who use wheelchairs or to ensure that, to  
 19 the maximum extent feasible, the path of travel to the altered area  
 20 and the bathrooms, telephones, and drinking fountains serving the  
 21 altered area, are readily accessible to and usable by individuals  
 22 with disabilities. 42 U.S.C. § 12183(a)(2).

23 30. Shelves and display units allowing self-service by customers at stores  
 24 must be located on an accessible route. 1991 Standards § 4.1.3(12)(b). An  
 25 accessible route must be at least 36 inches in width. 1991 Standards § 4.3.3.

26 31. Here, the failure to provide accessible paths of travel in and throughout  
 27 the merchandise aisles is a violation of the law.

28 32. Nowhere shall the cross slope of an accessible route exceed 2.1%. 1991

Standards §4.3.7. 2010 Standards § 403.3.

33. Here, the slopes along the walkways exceeded the levels allowed by law.

34. If controls, dispensers, receptacles or other equipment are provided, they must be on an accessible route and be mounted so that their highest operable parts are no greater than 54 inches above the floor. 1991 Standards § 4.22.7; 4.27.

35. Here, the failure to ensure that the produce bags met the height requirement is a violation of the ADA.

36. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

37. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

38. Given its location and options, plaintiff will continue to desire to patronize the Store but he has been and will continue to be discriminated against due to the lack of accessible facilities and, therefore, seeks injunctive relief to remove the barriers.

## **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT** (On behalf of plaintiff and against all defendants) (Cal Civ § 51-53)

39. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal.

1 Civ. Code §51(b).

2 40. The Unruh Act provides that a violation of the ADA is a violation of  
3 the Unruh Act. Cal. Civ. Code, § 51(f).

4 41. Defendants' acts and omissions, as herein alleged, have violated the  
5 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of,  
6 Plaintiff's rights to full and equal use of the accommodations, advantages,  
7 facilities, privileges, or services offered.

8 42. Because the violation of the Unruh Civil Rights Act resulted in  
9 difficulty, discomfort or embarrassment for the plaintiff, the defendants are  
10 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
11 55.56(a)-(c).)

12  
13 **PRAYER:**

14 Wherefore, Plaintiff prays that this Court award damages and provide  
15 relief as follows:

16 1. For injunctive relief, compelling Defendants to comply with the  
17 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
18 plaintiff is not invoking section 55 of the California Civil Code and is not  
19 seeking injunctive relief under the Disabled Persons Act at all.

20 2. Damages under the Unruh Civil Rights Act, which provides for actual  
21 damages and a statutory minimum of \$4,000.

22 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
23 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.



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Dated: October 30, 2018

CENTER FOR DISABILITY ACCESS

/s/ Amanda Lockhart Seabock

By: \_\_\_\_\_

Amanda Lockhart Seabock, Esq.  
Attorney for plaintiff